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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CHAD LEROY STONE,

Defendant.

CR 22-93-BLG-SPW

**DEFENDANT STONE’S OPPOSED
MOTION TO DISMISS FOR
FAILURE TO STATE AN
OFFENSE OR BECAUSE AN
OFFENSE ELEMENT IS MISSING
OR BOTH**

INTRODUCTION

Mr. Stone has been charged with being a prohibited person in possession of a firearm in violation of 18 USC §922(g)(8). The indictment alleges that, on July 23, 2021, Mr. Stone, “knowing he was subject to a court order, issued after a hearing of which he received actual notice, and at which he had an opportunity to participate, restraining him from harassing, stalking, or threatening an intimate partner, that by

its terms explicitly prohibited the use, attempted use or threatened use of physical force against such intimate partner that would reasonably be expected to cause bodily injury, knowingly possessed, in and affecting interstate commerce, a firearm and ammunition.” (ECF No. 2).

The undersigned reviewed discovery and did not locate any materials consistent with the order referred to in the Indictment. Counsel encountered an order of protection issued on November 15, 2017, under Cause No. DR-15-117, Montana Sixth Judicial District Court, Park County. Exhibit A, USAO – 021-024. That order restrains Chad Stone from contacting, harassing, threatening, or committing acts of violence against Lindsay Stone and was issued following a hearing of which Mr. Stone had notice and an opportunity to participate. The Order was issued for a term of three years. Ex. A.

The offense conduct alleged in the Indictment is said to have occurred nearly one year after the expiration of this order, however, on July 23, 2021.

Counsel also encountered an order issued on November 9, 2020, under the same cause number, titled “Order Regarding Motions and Scheduling Hearing”. The order, which is attached as Exhibit B (USAO - 117), was issued in response to filings by Lyndsay Stone’s divorce attorney seeking to extend an order of protection and to hold Mr. Stone in civil contempt over various disputes. This second order states

simply “[t]he Order of Protection is hereby Permanent”¹ and notes that its decision is based upon review of Lindsay Stone’s motion. By this second order, the court purports to have imposed a permanent order of protection without holding a hearing in bullet point (1) while setting a hearing two months later regarding Ms. Stone’s simultaneous request to hold Mr. Stone in contempt in bullet point (2).

Mr. Stone has been unable to locate any other order which was in effect at the time of his offense that would implicate 18 U.S.C. §922(g)(8). Based upon the materials provided, Mr. Stone has ascertained that, at trial, the United States will allege that on July 23, 2021, he was prohibited from possessing a firearm by the November 9, 2020 order at Exhibit B.

MOTION TO DISMISS

Mr. Stone moves to dismiss the indictment. The November 9, 2020 Order, which the Indictment asserts has imposed prohibited status upon Mr. Stone, was issued without a hearing and did not explicitly state, by its terms, that Mr. Stone was restrained from using or threatening physical force against an intimate partner. Any order which would otherwise implicate §922(g)(8) expired in November of 2020, before the offense date listed in the Indictment. The order upon which this

¹ While it is presumed this is in reference to Exhibit A, no citation was made to the referenced order.

prosecution relies does not comply with the basic statutory elements of 18 U.S.C. §922(g)(8) or Montana's laws concerning orders of protection.

CONCLUSION

WHEREFORE Defendant prays that based on this motion and the brief that supports it (ECF No. 39) the Court will order the indictment dismissed.

RESPECTFULLY SUBMITTED this 28th day of November, 2022.

/s/ Russell A. Hart
RUSSELL A. HART
Assistant Federal Defender
Counsel for Defendant

**CERTIFICATE OF SERVICE
L.R. 5.2(b)**

I hereby certify that on November 28, 2022, a copy of the foregoing document was served on the following persons by the following means:

1 CM-ECF

2 Mail

1. CLERK, UNITED STATES DISTRICT COURT

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